



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (717-295-5547) and FIRST CLASS MAIL

SEP 29 2011

Duer A. Pierce, Treasurer
Friends of Joe Pitts
902 Columbia Avenue
Lancaster, PA 17603

RE: MUR 6418

Dear Mr. Pierce:

On November 4, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On September 27, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Friends of Joe Pitts, and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(b). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Friends of Joe Pitts and MUR: 6418
Duer A. Pierce, in his
official capacity as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Lois Herr. See 2 U.S.C. § 437(g)(a)(1).

II. FACTUAL AND LEGAL ANALYSIS**A. Factual Background**

Congressman Joe Pitts was first elected to the U.S. House of Representatives from Pennsylvania's 16th Congressional District in 1996, and is currently serving his eighth term. Friends of Joe Pitts and Duer A. Pierce, in his official capacity as treasurer, ("Pitts Committee") is his authorized principal campaign committee.

In the four months leading up to the 2010 general election, in which Congressman Pitts ran against Democratic challenger Lois Herr, the Republican Committee of Chester County ("RCCC") posted a series of fifteen short videos on its YouTube channel and the website www.leftwinglois.com. The complaint does not include either transcripts or copies of the videos. According to a local media report, the videos "mock" Ms. Herr's positions on health care and abortion rights. See Tom Murse, *Herr Files Complaint with Federal Election Commission*, Lancaster Online, Oct. 27, 2010, http://lancasteronline.com/article/local/305547_Herr-files-complaint-with-Federal-Election-Commission.html. Although the October 2010 complaint includes the web address for each video, it appears that the videos were removed from the RCCC's YouTube channel and the

www.leftwinglois.com website was deactivated sometime after the November 2010 election.

Additionally, it does not appear that there are cached or archived versions of the videos online.

The following table contains the information available regarding the videos:

Table 1. RCCC Videos

Date Posted	Title	Length
7/15/10	"Rules for Radicals"	1:34
7/23/10	"Howard Dean"	1:35
7/25/10	"How Liberal is Lois?"	1:10
8/3/10	"Barney Frank Healthcare"	2:37
8/14/10	"Breaking the Rules"	1:40
8/22/10	"The Cruise, Part 1"	2:02
8/22/10	"The Cruise, Part 2"	2:25
8/29/10	"Government-Funded Abortion"	1:24
9/8/10	"Marijuana"	1:25
9/8/10	"ACORN"	1:44
9/8/10	"The Earmarks Flip-Flop"	1:36
9/19/10	"Left of Obama"	2:20
10/11/10	"Left of Pelosi"	2:03
10/12/10	"No Plan for Jobs"	1:45
10/24/10	"The Candidate Who Cried Wolf"	1:34

Complainant asserts that the videos "targeted" Ms. Herr, and were produced for the purpose of influencing voters in a federal election to the benefit of the Pitts Committee.

Complaint at 1. Accordingly, Complainant alleges that the Pitts Committee violated 2 U.S.C. § 434(b) by failing to report the videos as in-kind contributions.

Information in the possession of the Commission indicates that the RCCC did not pay to produce the videos, but instead the videos were produced by a volunteer. Information also indicates that the RCCC only incurred a \$300 expense for hosting the website on which the videos were displayed.

The Pitts Committee denies that it failed to file any disclosure reports required by law.

Pitts Response at 1. It asserts that it never received notification that an in-kind contribution had been made, and therefore had no reason to report any such in-kind contribution. *Id.*

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B. Legal Analysis

A contribution is any gift, subscription, loan, advance, or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(a)(1).

Commission regulations define “anything of value” to include in-kind contributions: the provision of goods or services without charge or at a charge that is less than the usual and normal charge. 11 C.F.R. § 100.52(d)(1).

Under the Act, the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is specifically exempted from the definition of contribution. 2 U.S.C. § 431(8)(B)(i); 11 C.F.R. § 100.74. Additionally, the use of an individual’s real or personal property, when provided in the course of volunteering personal services on his or her residential premises, is excluded from the definitions of contribution and expenditure. 11 C.F.R. §§ 100.75 and 100.135. Commission regulations further provide that an individual’s or group of individuals’ uncompensated internet activity for the purpose of influencing a Federal election – whether undertaken independently or in coordination with any candidate, authorized committee, or political party committee – is exempted from the definitions of contribution and expenditure. 11 C.F.R. §§ 100.94 and 100.155. These regulations specifically exempt the value of an individual’s uncompensated time and the value of any special skills that individual may bring to bear on their internet activities, as well as his use of equipment and services for uncompensated internet activity, regardless of who owns such equipment or where it is located. *Id. See also* Explanation and Justification for Internet Communications, 71 Fed. Reg. 18589, 18604-05 (April 12, 2006). The regulations define “internet activity” to include a non-exhaustive list of potential activity, as well as “any other form of communication distributed over the internet.” *Id.*

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1 Based on information indicating that the RCCC did not pay for the videos, but that they
2 were instead produced by an individual volunteer using his/her own resources, it appears that the
3 production of the videos constitutes "uncompensated volunteer services" specifically exempted
4 from the definitions of contribution and expenditure. *See supra* at 3. Further, to the extent that
5 the volunteer had a role in posting the videos on the website, it would similarly be
6 "uncompensated internet activity." The complaint alleges that the videos should have been
7 reported as an in-kind contribution. The complaint alleges no specific facts supporting an
8 allegation of coordination, however, the cost of hosting the videos on the RCCC's website would
9 constitute an in-kind contribution if any of the communications were coordinated with the Pitts
10 Committee.

11 A candidate or authorized committee is required to report the usual and normal value of a
12 coordinated communication as an in-kind contribution. 11 C.F.R. § 109.21(b)(3). A
13 communication is coordinated with a candidate or his authorized committee when it is paid for
14 by a person other than the candidate or authorized committee, satisfies one of the content
15 standards at 11 C.F.R. § 109.21(c),¹ and satisfies one of the conduct standards at 11 C.F.R.
16 § 109.21(d).² 11 C.F.R. § 109.21(a). Furthermore, any expenditure that is made in cooperation,
17 consultation or concert with, or at the request or suggestion of, a candidate or his authorized
18 committee, but that is not made for a coordinated communication under 11 C.F.R. § 109.21, is an

¹ There are five types of content that satisfy the content standard: (1) an electioneering communication; (2) a public communication that disseminates, distributes, or republishes campaign material prepared by a candidate or his authorized committee; (3) a public communication expressly advocating the election or defeat of a clearly identified Federal candidate; (4) a public communication that refers to a clearly identified Federal candidate that is distributed in that jurisdiction within either 90 or 120 days of an election; and (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c).

² There are five types of conduct that satisfy the conduct standard: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; and (5) former employee or independent contractor. 11 C.F.R. § 109.21(d).

1 in-kind contribution to the candidate committee with whom it was coordinated. 11 C.F.R.
2 § 109.20(b).

3 Based on the information presented in the complaint and the responses, it does not appear
4 that there was any conduct that would trigger coordination under either 11 C.F.R. §§ 109.20 or
5 109.21. In its response, the Pitts Committee asserts that it never received notification from the
6 RCCC that an in-kind contribution had been made, suggesting that it was unaware of the
7 communications. See Pitts Response at 1. There is no information contrary to this assertion.
8 Accordingly, the Commission found no reason to believe that Friends of Joe Pitts and Duer A.
9 Pierce, Jr., in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to report the
10 cost of the videos as an in-kind contribution.

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